Enforcement Process

The potential monetary cost of non-compliance
Penalties can be as high as $37,500 per violation per day.
Enforcement Process - Agenda

- Case Review Officer
  - Review of documents / determination of violations
  - Enforcement options
- Calculating the Penalty
- Negotiation Process
- Case Studies
Case Review Officer’s Role

- Help finalize inspection report
  - Mail it to facility
- Ensure multimedia inspection form is distributed
- Review documents and collect further information
Case Review Officer’s Role

- Determine path of enforcement
- Discuss information with enforcement team and attorneys
- Determine what tools to utilize to ensure quick return to compliance
Case Review Officer: Collecting the Information and Evidence …

- Background search
- Information from other federal/state/local agencies
- Compliance history – various EPA databases
- Inspection documentation
- Documents received from facility post-inspection
  - Informal information gathering
  - Formal written information requests
### Potential Enforcement Outcomes

- Closure of case/compliance
- Compliance assistance letter
- Finding of Violation (FOV)
- Administrative Order
- Expedited Settlement Agreement (ESA)
- Administrative Civil Complaint
- Judicial Civil Complaint (DOJ cases)
- Criminal Charges (not a CRIB action)
Our form of a traffic ticket - ESAs

- Easily correctable violation(s)
- Not a CAA Title V facility
- No history of violation in past 5 years (corporate wide)
- No accident in last 5 years that is attributed to the violation
- Total penalty can not add up to more than $7,500
ESAs – Facility Will Receive

- A letter indicating the violations found
- A form to respond back to EPA discussing how they have or will come into compliance
- The penalty to be paid

No negotiations occur
Penalty = Economic Benefit + Gravity
Economic Benefit Component

- Value of the money the facility saved by
  - Delayed or avoided costs

- Examples include:
  - Failure to develop program
  - Delayed or missed maintenance of equipment, such as tank inspections / valve replacement
  - Missed training / compliance audits / PHAs
Gravity Component

- Seriousness of each violation
- Duration
  - Earliest date of noncompliance to date last violation was corrected
- Size of violator
- Other adjustment factors
Adjustment and Mitigation Factors

- **Degree of Culpability**
  - Upward adjustment up to 25%

- **History of Violation**
  - Upward adjustment up to 50%

- **Good Faith Reductions**
  - Decrease up to 15% for cooperation
  - Decrease up to 15% for speedy compliance
Adjustment and Mitigation Factors (cont.)

- Ability to Pay
- Offsetting Penalties Paid to Federal, State, Tribal, and Local Governments or Citizen Groups for the Same Violations
- Special Circumstances/Extraordinary Adjustments
## Assessing Seriousness of Violation

- **Determine the potential for harm and extent of deviation for each violation**

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<thead>
<tr>
<th>EXTENT OF DEVIATION</th>
<th>POTENTIAL FOR HARM</th>
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<td>Minor</td>
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- **POTENTIAL FOR HARM**
  - Minor: $1,000, $500
  - Moderate: $10,000, $5,000
  - Major: $25,000, $20,000
  - *Note: Adjustments can vary depending on specific violation and circumstances.*
Assessing Seriousness of Violation - Criteria

- Amount and toxicity of regulated chemicals
- Did violation cause or could reasonably cause an off-site exposure to the chemical?
- Proximity of the surrounding population
- Extent of community evacuation required or potentially required
Assessing Seriousness of Violation – Criteria (cont.)

- Effect noncompliance has on the community's ability to plan for chemical emergencies
- Any potential or actual problems first responders and emergency managers encountered because of the facility's violation
- Number of processes at which the same violations occurred, and
- Prevention Program level
Administrative Case

- Does not qualify for an ESA
- Not serious enough to involve DOJ
- Typically pre-negotiated penalties
It’s a DOJ case if any of the following:

- Penalty >$295,000
- It will take the facility more than 1 year to come into compliance (injunctive relief needed)
- Significant accident (fatality, multiple injuries, etc.)
- Nationally significant issue
- Multiple statute cases
  - EPCRA or RMProgram and RCRA/Air/Water
Settlement Includes

- Come into compliance
  - Injunctive Relief (DOJ cases)
- Pay cash penalty
- Perform Supplemental Environmental Projects (SEP)
  - Improvements to facility (not required by law)
  - Community improvements
- File complaint and settlement documents with the court
Closing the Case

- Case information available publically at: www.epa-echo.gov/echo
- Press Releases
- Case closure occurs when the following is completed
  - Penalty paid
  - SEP completed
  - Compliance achieved (including injunctive relief)
Enforcement Trends

- Moving away from expedited settlements
- Penalties have risen since June 1999 due to
  - Duration of violations
  - Inspecting larger/more complex facilities
- More DOJ involvement during the past few years than previously
Case Studies

What others have experienced
Case Study Ex. # 1: Midwest Farmers CoOp (Nehawka, Neb.)

- Initiating event:
  - Release of 300 pounds of anhydrous ammonia
  - Date: August 9, 2006

- Initiating activity: Written information request
Case Study Ex. # 1: Midwest Farmers CoOp (Nehawka, Neb.)

- Results: NON and submission of EPCRA follow-up letters
- Other notes: RMP reportable accident due to environmental damages
- Open to close: approx. four months
Initiating event: missed five-year update and had RMP reportable accident

Date: May 22, 2008, CAA 112(r) inspection
Case Study Ex. # 1: Midwest Farmers CoOp (Nehawka, Neb.)

Results: ESA

- Updated program and plan
- Major components: industry standards and hazard review
- Penalty: $1,020

- Open to close: approx. 10 months
Case Study Ex. # 2: KAAPA Ethanol Facility (Minden, Neb.)

- **Initiating event:** CAA 112(r) Inspection on July 8, 2010
- **Results:** ESA
  - Major components: documentation of safe upper and lower limits, inadequate PHA follow-up, revise SOPs, conduct compliance audit.
  - **Penalty:** $3,780
- **Open to close:** 32 months

Case Studies 4/24/2013
Case Study Ex. # 3: Frontier CoOp (Mead, Neb.)

- Initiating event: CAA 112(r) Inspection on June 27, 2007
Case Study Ex. # 3: Frontier CoOp (Mead, Neb.)

- Results: Administrative Civil Complaint
  - Updated program and plan
  - Major components: maintenance and compliance audits
  - Unreported release of ammonia, neighbor sent to hospital, incomplete incident investigation
  - $6,000 cash penalty, plus SEP estimated costs at $82,500
- Open to close: 41 months (penalty paid within approx. 15 months)
Case Study Ex. # 4: Chemcentral (Kansas City, Mo.)

Case Study Ex. # 4: Chemcentral (Kansas City, Mo.)

- Results: DOJ referral and civil complaint
  - Submit current Tier II report
  - Meet general duty obligations
  - Penalty $225,000, plus repay $150,713 of EPA’s emergency response costs
- Open to close: approx. about 13 months
Case Study Ex #5: NCRA (McPherson & Conway, Kan.)

- Initiating Events
  - 20+ day flare event (>640,000 lbs. SO₂ & 6,900 lbs. H₂S released) in December 2005
  - Inspections at both facilities in May 2006
  - Formal information request in 2007
Case Study Ex #5: NCRA (McPherson & Conway, Kan.)

- No Risk Management Program for all covered processes
- Did not inspect large worst-case vessels in time frames established by the industry
- Had not submitted Tier II reports for caverns
- Failed to timely report releases for 3 other events
- Data quality errors on TRI report
Case Study Ex #5: NCRA (McPherson & Conway, Kan.)

- **Settlement**
  - Cash Penalty - $700,000
  - Supplemental Environmental Projects - Spend approx. $746,000 on equipment/services for emergency response/planning entities throughout McPherson city and county
Settlement

Injunctive Relief

- Risk management applicability study
- Third-party audit of Tier II and TRI information
- Detailed tank inspection timelines and documentation
- EPCRA/CERCLA release reporting compliance review and training
- Documentation of resolution of PHA and compliance audit findings

Open to settlement: 6 years

- Closure estimated to be in 2016
Case Study Ex #6: Tyson

- **Initiating events:**
  - 8 separate releases of anhydrous ammonia between 2006 & 2010
    - Multiple injuries and 1 fatality
  - Inspections at 6 facilities from 2008 to 2009
  - 3 formal information requests 2010 to 2011

- Date: 1st Inspection March 25, 2008
Case Study Ex #6: Tyson

- Major findings:
  - failure to follow industry standards
    - co-location boiler/refrigeration machinery
    - replacing safety relief valves
  - prevention program
  - reporting on RMP
Case Study Ex #6: Tyson

- Results: DOJ referral and civil complaint
  - Penalty: $3.95 million cash
  - SEPs: $300,000 in ER equipment to fire departments in 8 EJ areas
  - Injunctive Relief: Conduct pipe testing and third party audits at all 23 facilities

- Open to settlement: approx. 5 years
  - Closure estimated between 2015-2017
Help! What should I do next?
Self-Disclosure Policy is under review
Websites

- www.epa.gov/region7/chemical_risk_prog
- Ethanol Manual
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Questions?